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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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SEGUNDO NARVAEZ,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

---X

16-CV-01980 (GBD)(SN)

ORDER

SARAH NETBURN, United States Magistrate Judge:

By letter dated January 17, 2017, pro se plaintiff Segundo Narvaez moves the Court to grant his request for pro bono counsel. For the reasons set forth below, the motion is denied without prejudice.

A federal judge has "broad discretion" when deciding whether to appoint counsel to an indigent litigant. Hodge v. Police Officers, 802 F.2d 58, 60 (2d Cir. 1986). See Burgos v. Hopkins, 14 F.3d 787, 789 (2d Cir. 1994). "There is no requirement that an indigent litigant be appointed pro bono counsel in civil matters." Id. at 789; 28 U.S.C. § 1915(e).

The factors to be considered in ruling on a motion for pro bono counsel are well settled and include "the merits of plaintiff's case, the plaintiff's ability to pay for private counsel, [plaintiff's] efforts to obtain a lawyer, the availability of counsel, and the plaintiff's ability to gather the facts and deal with the issues if unassisted by counsel." Cooper v. A. Sargenti Co., 877 F.2d 170, 172 (2d Cir. 1989). Of these, "the factor which command[s] the most attention [is] the merits." Indeed:

> Courts do not perform a useful service if they appoint a volunteer lawyer to a case which a private lawyer would not take if it were brought to his or her attention. Nor do courts perform a socially justified function when they request the services of a volunteer lawyer for a meritless case that no lawyer would take were the plaintiff not indigent. Id.

Narvaez filed this action, pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985, and the Americans with Disabilities Act, alleging that while incarcerated, he was mistakenly diagnosed with tuberculosis, housed with other inmates who tested positive for tuberculosis, contracted tuberculosis, and was not given proper medication after he tested positive for tuberculosis. The merits of Narvaez's case are not so apparent as to warrant the appointment of counsel.

Accordingly, the Court denies his application without prejudice. Narvaez must submit his opposition to defendants' motion to dismiss by Friday, February 10, 2017—if he does not respond by that date, the Court will consider the motion fully briefed.

SO ORDERED.

SARAH NETBURN
United States Magistrate Judge

DATED: New York, New York
January 27, 2017

CC: Segundo Narvaez (*by Chambers*)
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